

02D02-1708-CT-000452

Allen Superior Court 2

Filed: 8/24/2017 1:09 PM
Clerk
Allen County, Indiana

STATE OF INDIANA)	IN THE ALLEN SUPERIOR COURT
) SS:	
COUNTY OF ALLEN)	CASE NO.
KEITH SEE,)	
)	
Plaintiff,)	
)	
v.)	
)	
OFFICER DAVID BUSH and)	
CITY OF FORT WAYNE,)	
)	
Defendants.)	

COMPLAINT AND JURY DEMAND

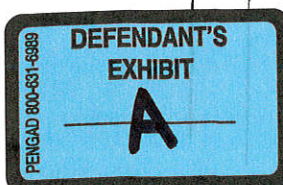
Plaintiff, Mr. Keith See, alleges as follows against Defendants, Officer David Bush and City of Fort Wayne:

I. NATURE OF ACTION

1. In June 2016, Mr. See was stopped, cited, and prosecuted for briefly touching the water of a fountain in a park in downtown Fort Wayne.
2. Mr. See brings this action pursuant to 42 U.S.C. § 1983 for damages for violations of the United States Constitution and Indiana law.

II. PARTIES

3. Plaintiff is Keith See. Mr. See at all times material was a U.S. citizen and homeless resident of Allen County, Indiana.
4. Defendant is City of Fort Wayne. Defendant City is named in its representative capacity as liable for the torts Defendant Bush and its employees committed within the scope of their employment.
5. Defendant is Officer David Bush. Defendant Bush is named in his individual capacity for Mr. See's constitutional and tort claims. Defendant Bush at all times material acted under



color of law and within the scope of his employment.

III. FACTS

A BACKGROUND TO UNLAWFUL DETENTION & MALICIOUS PROSECUTION

6. On the afternoon of June 27, 2016, Mr. See was in a public city park, Freimann Square, in downtown Fort Wayne, Indiana speaking with a friend and repairing a bicycle.
7. The day was very hot. Around 3 p.m., Mr. See briefly touched water from a fountain in the park to his face.
8. At no time did Mr. See bathe, swim, or wade in the water of the fountain.
9. However, other individuals did wade and swim in the fountain that day and throughout the summer of 2016, both in the presence of Defendant Bush and other officers of Defendant City.

B. UNLAWFUL DETENTION

10. After Mr. See briefly touched the water from the fountain on June 27, 2016, Defendant Bush approached Mr. See, detained him, and issued him a citation for a fine of up to \$2,500 for allegedly "bathing" in a public fountain in violation of City of Fort Wayne Ordinance § 97.40.
11. The ordinance provides in relevant part: "No person shall bathe, wade or swim in any pond, fountain, stream or river within any park . . ." *See* Fort Wayne, Ind., Code of Ordinances § 97.40. The terms "bathe," wash," and "swim" are defined neither in the chapter nor elsewhere in the code.
12. City ordinance prescribes a fine of up to \$2,500 for a violation of this ordinance. *See* Fort Wayne, Ind., Code of Ordinances § 97.99(A); *see also* Ind. Code § 36-1-3-8(a)(10)(B).

13. Nowhere in the ordinance, however, is contact with a park fountain forbidden.

14. Mr. See was not free to leave Defendant Bush's presence or refuse his orders while he was being confronted and cited that day.

15. Defendant Bush knew Mr. See was homeless.

16. Neither Defendant Bush nor any other City of Fort Wayne officer cited any non-homeless individual that summer for allegedly violating City of Fort Wayne Ordinance § 97.40 in the summer of 2016.

C. MALICIOUS PROSECUTION

17. On June 28, 2016, the City of Fort Wayne filed its case against Mr. See for alleged violating City of Fort Wayne Ordinance § 97.40.

18. The City alleged that Mr. See on the afternoon the day before was "washing [his] face and hands" in the park fountain.

19. Mr. See denied the charge and maintained his innocence throughout the prosecution.

20. On November 14, 2016, a few days before the scheduled jury trial, all charges were dismissed against Mr. See.

21. On December 1, 2016, Mr. See filed his Notice of Tort Claim. It is attached and incorporated into this Complaint as Exhibit A.

IV. CLAIMS FOR RELIEF

CONSTITUTIONAL RIGHTS CLAIMS

FOURTH & FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION (DEFENDANT BUSH)

22. Based on the facts above, Mr. See alleges he was subjected to unlawful search and seizure and malicious prosecution in violation of his rights under the Fourth Amendment

to the U.S. Constitution and as actionable through 42 U.S.C. § 1983.

23. Based on the facts above, Mr. See alleges he was subjected to the denial equal protection of the law as a homeless individual in violation of the Fourteenth Amendment to the U.S. Constitution and as actionable through 42 U.S.C. § 1983.

24. Defendant Bush's actions were intentional, malicious, willful, wanton, and discriminatory against Mr. See based on his status as a homeless individual.

25. As a result of the intentional wrongdoing of these Defendants, Mr. See suffered legal fees and costs, lost wages, emotional distress, mental anguish, monetary expenses, inconvenience, and other injury and damages.

STATE TORT CLAIMS

FALSE ARREST & FALSE IMPRISONMENT (ALL DEFENDANTS)

26. Based on the facts above, Mr. See alleges Defendant Bush subjected him to the torts of false arrest and false imprisonment, for which Defendant City is liable under the doctrine of respondeat superior.

27. As a result of the intentional wrongdoing of these Defendants, Mr. See suffered legal fees and costs, lost wages, emotional distress, mental anguish, monetary expenses, inconvenience, and other injury and damages.

V. PRAYER FOR RELIEF

Wherefore, Mr. See respectfully requests the Court:

- A. Award him compensatory damages against all Defendants;
- B. Award him punitive damages against individual Defendants;
- C. Award his legal costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and

D. Grant all other just and proper relief.

JURY DEMAND

Mr. See demands a trial by jury on all issues alleged pursuant to Rule 38(B) of the Indiana Rules of Civil Procedure.

Respectfully,

CHRISTOPHER C. MYERS & ASSOCIATES

/s/ David W. Frank

David W. Frank, #31615-02

Christopher C. Myers, #10043-02

809 South Calhoun Street, Suite 400

Fort Wayne, IN 46802-2307

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Counsel for Plaintiff, Mr. Keith See

DFI

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December 1, 2016

Tom Henry, Mayor
City of Fort Wayne
Citizen's Square
200 East Berry Street, 4th Floor
Fort Wayne, IN 46802

Steve Reed, Chief of Police
Fort Wayne Police Department
1 East Main Street
Fort Wayne, Indiana 46803

Re: *Keith See v. City of Fort Wayne and Officer David Bush*

NOTICE OF TORT CLAIM

Dear Mayor Henry and Chief Reed:

Christopher C. Myers & Associates represents Claimant Keith See in a legal matter concerning Respondents City of Fort Wayne and Officer David Bush, #1827F.

This letter serves as Mr. See's Notice of Tort Claim to you.

Circumstances Which Brought About the Loss

Introduction

This is an action for damages against Respondents City of Fort Wayne ("City") and Officer David Bush ("Bush") for violations of Mr. See's rights under the Fourth and Fourteenth Amendments to the United States Constitution and for the common law torts of false arrest and false imprisonment. Mr. See was unlawfully seized and maliciously prosecuted in violation of

Ex. A

the Fourth Amendment and denied equal protection of law in violation of the Fourteenth Amendment.

Parties

Claimant is Keith See. Mr. See is and was at all times relevant to this Notice a homeless citizen of the United States and resident of Fort Wayne, Indiana.

Respondent is City. Respondent City is a local government headquartered in Fort Wayne, Indiana, and is named in its representative capacity as employer of Respondent Bush.

Respondent is Officer Bush. Respondent Bush is a non-homeless employee of Respondent City. At all times relevant to this Notice, Respondent Bush acted within the scope of his employment and agency and under color of law. Respondent Bush is named in his individual capacity.

Facts

On the afternoon of June 27, 2016, Mr. See was in a public park, Freimann Square, in Fort Wayne, Indiana speaking with a friend and repairing a bicycle.

The day was very hot. Around 3 p.m., Mr. See briefly touched water from the park fountain to his face. At no time did he bathe, swim, or wade in the water. However, other individuals did wade and swim in the fountain that day and throughout the summer, both in the presence of Respondent Bush and other officers of Respondent City.

After Mr. See touched the fountain water on the above date, Respondent Bush approached Mr. See, detained him, and issued him a citation for a fine of up to \$2,500 for allegedly "bathing" in a public fountain in violation of City of Fort Wayne Ordinance § 97.40. Mr. See was not free to leave Respondent Bush's presence or refuse his orders while he was being confronted. Respondent Bush knew Mr. See was homeless.

On June 28, 2016, the City of Fort Wayne filed its case against Mr. See through its Complaint and Summons, Citation No. 733860.

The City's Complaint alleged that Mr. See on June 27, 2016 at 3:13 p.m. was "washing face and hands" in the fountain. The ordinance under which he was charged provides in relevant part: "No person shall bathe, wade or swim in any pond, fountain, stream or river within any park . . ." The terms "bathe," "wash," and "swim" are defined neither in the chapter nor elsewhere in the code. City ordinance prescribes a fine of up to \$2,500 for a violation of this ordinance. Fort Wayne, Ind., Code of Ordinances § 97.99(A); *see also* Ind. Code § 36-1-3-8(a)(10)(B). Nowhere in the ordinance is contact with a park fountain or, for that matter, washing in a park fountain forbidden by city ordinance.

Between June 2015 and June 2016, only one (1) individual was charged with violating this ordinance — Mr. See.

Mr. See maintained his innocence through the prosecution.

On November 14, 2016 all charges were dismissed against Mr. See.

Mr. See notes that Defendant City plans to conduct a series of future raids on homeless encampments, including on December 2, 2016, wherein he anticipates similar constitutional concerns may be raised.

Claims

Based on the facts above, Mr. See alleges he was subjected him to unlawful search and seizure and malicious prosecution in violation of his rights under the Fourth Amendment to the United States Constitution as actionable through 42 U.S.C. § 1983.

Based on the facts above, Mr. See alleges he was subjected to the denial equal protection of the law in violation of the Fourteenth Amendment to the United States Constitution as actionable through 42 U.S.C. § 1983.

Based on the facts above, Mr. See alleges Respondent Officers subjected him to the torts of battery via unwanted and offensive touching, false arrest, and false imprisonment, for which Respondent City is liable under the doctrine of respondeat superior.

Extent of Loss

Mr. See suffered legal fees and costs, emotional distress, mental anguish, monetary expenses, inconvenience, and other injury and damages.

Time and Place the Loss Occurred

These violations of Mr. See's rights and the torts against him occurred from June 2016 through November 2016 in Fort Wayne, Indiana.

Names of All Persons Known Involved

Claimant: Keith See

Respondents: David Bush

Witness: Teresa-Rush, Jane and John Does, including Jane and John Does bathing and/or wading in a park fountain

Amount of Damages Sought

Mr. See understands there is a cap for relief available to individuals for state tort claims under the Indiana Tort Claims Act. He seeks whatever amount a judge or jury may find

reasonable.

He may also seek additional compensation to which he is entitled under federal law, including attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

Residence of Claimant at Time of the Loss and at Time of Filing of This Notice

Mr. See was homeless at the time of loss and is homeless at the time of this Notice. He may be reached through his counsel.

Respectfully,

CHRISTOPHER C. MYERS & ASSOCIATES

A handwritten signature in black ink, appearing to read 'DW', is written over a horizontal line.

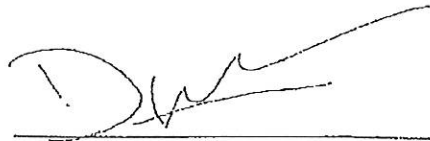
David W. Frank

CERTIFICATE OF SERVICE

The undersigned affirms a true copy of the above Tort Claim Notice was deposited in the United States Mail, postage prepaid, on the 1st of December 2016 addressed to:

Tom Henry, Mayor
City of Fort Wayne
Citizen's Square
200 East Berry Street, 4th Floor
Fort Wayne, IN 46802

Steve Reed, Chief of Police
Fort Wayne Police Department
1 East Main Street
Fort Wayne, Indiana 46803



David W. Frank

DF: